

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COREY A. ASKEW,

Plaintiff,

CIVIL ACTION NO. 07-11820

v.

DISTRICT JUDGE DAVID M. LAWSON

CORRECTIONAL OFFICER
CROPSEY, CORRECTIONAL
OFFICER BUSH,

MAGISTRATE JUDGE DONALD A. SCHEER

Defendants.

REPORT AND RECOMMENDATION CONCERNING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER

This case comes before the Court on Plaintiff's Motion for Temporary Restraining Order (Docket #8). For the reasons stated below, I recommend that the motion be denied.

Plaintiff, while incarcerated at the Alger Maximum Correctional Facility (LMF) in Munising, Michigan, filed the instant Complaint, pursuant to 42 U.S.C. § 1983, on April 26, 2007, against two prison officials employed by the Michigan Department of Corrections (MDOC), alleging that they had violated his federal constitutional rights as a result of various actions taken by them in connection with his incarceration. Specifically, Plaintiff alleged that Defendants dispensed an unknown chemical agent into a nearby cell without first evacuating him from the area. As a result, Plaintiff claimed that he suffered severe headaches and respiratory distress for several days afterwards. Plaintiff seeks declaratory relief, as well as compensatory and punitive damages.

Plaintiff filed a Motion for a Temporary Restraining Order on August 7, 2007, alleging that different prison officials at LMF, not including the two named defendants in the instant action, have denied him access to the law library, interfered with his incoming and outgoing mail, not allowed him to practice his religion and not provided him with nutritional meals. He claims that these actions were taken against him in retaliation for filing numerous grievances against these same officials.

In the exercise of its discretion with respect to a motion for preliminary injunction, a district court must give consideration to four factors: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction." American Civil Liberties Union of Ky v. McCreary County, Ky., 354 F.3d 438, 445 (6th Cir. 2003)(quoting Rock and Roll Hall of Fame & Museum, Inc. v. Gentile Prods., 134 F.3d 749, 753 (6th Cir.1998). Federal Rule of Civil Procedure 52(c) "requires a district court to make specific findings concerning each of these four factors, unless fewer are dispositive of the issue." See In re DeLorean Co., 755 F.2d 1223, 1228 (6th Cir. 1985).

Since the allegations found in the Motion for a Temporary Restraining Order do not involve the two named party defendants, injunctive relief cannot be granted in this action. Furthermore, Plaintiff has failed to provide specific facts from which the inference could be drawn that he is currently exposed to a substantial risk of serious harm beyond that normally to be expected in a prison setting. Plaintiff can file another §1983 action incorporating the allegations contained in his motion for a restraining order. For all the reasons stated, I recommend that Plaintiff's Motion for Temporary Restraining Order be denied.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall address specifically, and in the same order raised, each issue contained within the objections.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

Dated: November 2, 2007

CERTIFICATE OF SERVICE

I hereby certify on November 2, 2007 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on November 2, 2007. **Corey Askew.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217